

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

YOUSTAKE, INC., <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 5:17-cv-65
)	
JAY CLAYTON, in his official capacity as)	
Chairman of the United States Securities)	
and Exchange Commission, <i>et al.</i>)	
)	
Defendants.)	

**UNOPPOSED MOTION TO CORRECT CLERICAL MISTAKE AND
INCORPORATED MEMORANDUM OF LAW IN SUPPORT THEREOF**

Come now YouStake, Inc. (“YouStake”) and Frank DeGeorge (“Mr. DeGeorge”) (YouStake and Mr. DeGeorge being collectively known as the “Plaintiffs” and each being sometimes known as a “Plaintiff”), by and through undersigned counsel, pursuant to Federal Rule of Civil Procedure 60(a) and Federal Rule of Civil Procedure 59(e), and move this Honorable Court to correct a clerical mistake in the order dismissing this case (the “Order,” as found at DE #19) and in support thereof state as follows:

On December 19, 2017, the Plaintiffs filed a notice of dismissal (the “Notice of Dismissal,” as found at DE #18), and therein indicated that they are dismissing the above-captioned matter without prejudice pursuant to the allowances of Federal Rule of Civil Procedure 41(a)(1)(A)(i).

That provision allows, *inter alia*, “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment...” Fed. R. Civ. P. 41(a)(1)(A).

The same rule goes on to allow, *inter alia*, “Unless the notice or stipulation states otherwise, the dismissal is without prejudice.” Fed. R. Civ. P. 21(a)(1)(B).

The Order makes specific reference to the Notice of Dismissal, but provides that this case is dismissed “with prejudice.”

In light of the foregoing, it is respectfully submitted that this is likely to be a clerical mistake. And while the Plaintiffs certainly do not anticipate having reason to recommence this litigation (for the reasons set forth in the Notice of Dismissal), they do wish to reserve their respective rights.

Undersigned counsel has conferred with counsel for the Defendants, and has been informed that the Defendants do not oppose the relief sought herein.

WHEREFORE, the foregoing considered, YouStake, Inc. and Frank DeGeorge respectfully pray this Honorable Court (i) amend its order of dismissal (as found at DE #19) by striking the words “with prejudice” and replacing them with the words “without prejudice” and (ii) afford such other and further relief as may be just and proper.

Date: January 1, 2018

Respectfully submitted,

By: /s/ Maurice B. VerStandig
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and Frank DeGeorge*

[CERTIFICATE OF SERVICE ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of January, 2018, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF or in another authorized manner for those counsel or parties authorized to receive electronically Notices of Electronic Filing.

By: /s/ Maurice B. VerStandig
Maurice B. VerStandig